IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8544 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANT HIRABHAI PATEL

Versus

.

Appearance:

1. Special Civil Application No. 8544 of 1989

MR CHETAN PANDYA FOR MR SV RAJU for Petitioner No. 1

MR ND GOHIL, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/09/2004

ORAL JUDGEMENT

In the present petition, the short question that has arisen is as to whether the petitioner, who was at the relevant time placed under suspension should be paid

his subsistence allowance during the pendency of such suspension at the scale of pay prevailing at the time when he was placed under suspension or whether his subsistence allowance should also undergo change upon the scale of pay being revised pursuant to pay revisions.

2. The facts leading to the present petition, shortly stated, are that the petitioner who was appointed as Police Sub-Inspector in 1967 was placed under suspension by the order dated 20th August 1977. It appears that the suspension was on account of involvement of the petitioner in some criminal case. The petitioner has stated that in the said criminal case, the petitioner was convicted and sentenced to undergo rigourous imprisonment for one year and also fine of Rs.500/- by the judgment and order dated 10th March 1978 passed by the Special Court, Baroda. The High Court rejected the appeal of the petitioner, but the petitioner challenged the same before the Hon'ble Supreme Court, which SLP was pending at the time of filing of the petition. The leaned advocate for the petitioner is unable to state with clarity about the outcome of the SLP before the Hon'ble Supreme Court nor he is able to say the status of the petitioner as on date.

3. The petitioner has contended that the pay-scale of Rs.425-600 in which the petitioner was placed and on the basis of which the petitioner was being paid subsistence allowance during his suspension was revised from 1.1.86 to that of Rs.1350-2200. It is the case of the petitioner that despite this pay revision with effect from 1.1.86, the respondent continued to pay subsistence allowance at the rate of pre-revised scale. He has, therefore, prayed that his subsistence allowance be fixed in the new scale of Rs.1350-2200 with effect from 1.1.86.

4. Appearing for the petitioner, learned advocate for the petitioner Shri Chetan Pandya, submits that the issue involved in the present petition is squarely covered by a Division Bench judgment of this High Court in the case of State of Gujarat v. D.C.Chauhan, reported in 1998(1) G.L.H. 427, wherein this question had arisen and the Division Bench was pleased to hold that subsistence allowance of the Government servant would not be restricted to the pay-scale at the time when he was placed under suspension and that he would be entitled to subsistence allowance on the pay revised from time to time. Learned AGP Shri N.D.Gohil appearing for the respondent is unable to point out any distinguishing fact in the said decision.

5. Considering the submissions made and in view of the ratio of the above mentioned decision of the Division Bench, I am of the view that the action of the respondent in paying subsistence allowance to the petitioner at the pre-revised scale even after 1.1.86 is illegal. It is accordingly directed that the respondent shall pay to the petitioner the difference of subsistence allowance from 1.1.86 till the petitioner is continued in suspension on the basis of the revised rate of pay with effect from 1.1.86.

6. In the result, the petition succeeds. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)